SERVED: October 21, 2002

NTSB Order No. EA-5002

## UNITED STATES OF AMERICA NATIONAL TRANSPORTATION SAFETY BOARD WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24) on the 21<sup>st</sup> day of October, 2002

MARION C. BLAKEY, )

Administrator, Federal Aviation Administration,

Complainant,

v.

PAUL J. ROSSI,

Respondent.

Docket SE-16516

## ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the notice of appeal filed by the respondent in this proceeding because it was not filed within 10 days after service of the law judge's written decision on July 15, 2002, as required by Section 821.47 of the Board's Rules of Practice (49 CFR Part 821). We will grant the

(a) A party may appeal from a law judge's order or from

 $<sup>^1\</sup>mathrm{In}$  his decision, the law judge granted summary judgment on the Administrator's allegations that respondent's private pilot certificate (No. 025241011) should be suspended for 180 days for his violations of sections 61.3(e), 61.56(c), 61.57(c), 91.123(a) and (b), 91.129(i), and 91.13(a) of the Federal Aviation Regulations, 14 CFR Parts 61 and 91, in connection with an instrument flight rules flight he made in civil aircraft N8449L on November 6, 2001, at a time when he did not have an instrument rating.

<sup>&</sup>lt;sup>2</sup> Section 821.47 provides, in part, as follows:

<sup>§ 821.47</sup> Notice of Appeal.

motion, to which respondent filed a reply in opposition.

Respondent's faxed answer to the motion gives no reason for the untimeliness of his notice of appeal. Without good cause to excuse a failure to file a notice of appeal or appeal brief on time, a party's appeal must be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988). Respondent's possible mistake in computing the filing deadline for his notice of appeal would not constitute good cause. See, e.g., Administrator v Near, 5 NTSB 994 (1986)(Unfounded error in determining due date does not excuse procedural default).

## ACCORDINGLY, IT IS ORDERED THAT:

- 1. The Administrator's motion to dismiss is granted; and
- 2. The respondent's appeal is dismissed.

Ronald S. Battocchi General Counsel

## (...continued)

the initial decision by filing with the Board and serving upon the other parties (pursuant to § 821.8) a notice of appeal within 10 days after an oral initial decision has been rendered or a written decision or a final or appealable (see § 821.16) order has been served.

Respondent's notice of appeal was not filed until July 26, one day late. Respondent's brief (a one-page letter) in support of his appeal was also late, as it was due on August 14 (30 days after service of the law judge's decision), but not filed until August 16. See Section 821.48(a). Under these rules, the time for filing a notice of appeal or appeal brief runs from the service date of the law judge's decision, not from the date the party receives the decision. A copy of the Board's rules of practice had been sent to respondent when his tardy appeal from the Administrator's order was received by the Board.